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EXAMINER

KOHUT, DAVID M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,328	Applicant(s) RATJEN ET AL.	
	Examiner DAVID M. KOHUT	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 28-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/27/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. In the amendment filed on 27 February 2008, the following has occurred: claims 1-26 and 28 have been amended; claim 27 has been cancelled; and claim 29 has been added. The IDS statement filed 27 February 2008 has been entered and the reference cited has been previously considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-26 and 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. As per claim 14, the claim appears to be a method, but then recites structural components. Therefore, it is impossible to understand exactly what the Applicant is claiming as the invention (i.e. a method or a system), and as such, the claim is rejected.

5. Claims 15-26 and 28-29 incorporate the deficiencies of claim 14, through dependency, and are therefore rejected for the same reasons.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 7, 9-10, 12-23, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Konkright, U.S. Patent No. 5,850,344, reference A on the previously attached PTO-892.

8. As per claim 1, Konkright teaches a system for presenting information related to a medication of a patient (see abstract of Konkright) comprising a terminal device communicating with a wireless communication system (see column 4, lines 53-58 of Konkright); and a medicament device including a medicament container arranged to hold a medicament (see column 5, lines 53-54 of Konkright); a dispensing mechanism arranged for dispensing medicament from the medicament container (see column 5, lines 61-62 of Konkright); a detector arranged for detection of activation of said dispensing mechanism (see column 5, lines 66-67, and column 6, lines 1-3 of Konkright); a memory arranged for obtaining and storing patient-specific information related to specific medication of the patient and information from said detector (see column 6, lines 12-19 of Konkright); and a communication device for communication with a wireless communication system arranged for transmission of data related to said information related to specific medication of the patient, which transmission of data is activated depending on information from said detector (see column 4, lines 1-11 of Konkright); wherein said terminal device comprises a receiver for receiving said data from said communication device and a notifier for providing a user of the terminal device with a notification based on said data, and wherein said terminal device is arranged to present information related to the medication of the patient to the user of the terminal device based on said data (see column 4, lines 1-11 of Konkright).

9. As per claim 2, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the terminal device is arranged to present information obtained from the medicament device by said detector and transferred to the terminal device from the medicament device via the communication device (see column 6, lines 4-10 of Konkright).

10. As per claim 3, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the notifier is selected from the group including means for providing audible signals, visualizing means, vibration means, and light means (see column 5, lines 27-28 of Konkright).

11. As per claim 4, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the communication device is arranged for two-way transfer of data between the terminal device and the medicament device (see column 4, lines 1-3, and 53-58, and column 5, lines 53-65 of Konkright) and the terminal device comprises a transmitter for transmitting data from the terminal device to the communication device (see column 4, lines 53-58 of Konkright).

12. As per claim 5, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the terminal device is connected to a network computer system via said wireless communication system, thereby enabling a transfer of information related to the medication of the patient between the network computer system and the terminal device (see column 4, lines 52-60 of Konkright).

13. As per claim 7, Konkright teaches the system of claim 1 as described above.

Konkright further teaches the system wherein the medicament device comprises a

memory for storage of data related to the medication (see column 8, claim 8, lines 20-22 of Konkright).

14. As per claim 9, Konkright teaches the system of claim 1 as described above. Konkright further teaches the system wherein the data is communicable between the communication device and the terminal device in encrypted form (see column 7, lines 7-11 and 18-22 of Konkright).

15. As per claim 10, Konkright teaches the system of claim 1 as described above. Konkright further teaches the system wherein the communication device employs radiofrequency or optical signals (see column 4, lines 25-29 of Konkright).

16. As per claim 12, Konkright teaches the system of claim 1 as described above. Konkright further teaches the system wherein the medicament device is arranged to transfer data related to the medication of a patient to at least two terminal devices (see column 4, lines 43-51 of Konkright).

17. As per claim 13, Konkright teaches the system of claim 1 as described above. Konkright further teaches the system wherein said receiver is arranged to receive information from at least two communication devices (see column 3, lines 64-67, and column 4, lines 1-4 of Konkright).

18. Method claims 14-16, 18-19, 21-26 repeat the subject matter of claims 1-3, 4-5, 7, and 9-13 as a series of steps rather than a set of "means-plus-function" elements. As the underlying system has been shown to be fully disclosed by the teachings of Konkright in the above rejection of claims 1-3, 4-5, 7, and 9-13, it is readily apparent that the Konkright reference includes a method of using the system. As such, these

limitations are rejected for the same reasons provided in the rejection of claims 1-3, 4-5, 7, and 9-13 and incorporated herein.

19. As per claim 20, Konkright teaches the method of claim 14 as described above. Konkright further teaches the method wherein the detector is arranged to monitor the dispensing of medicament and is connected to the communication device to transfer data related to dispensing events (see column 6, lines 4-10 of Konkright); the method further comprising the steps of monitoring the dispensing of the medicament and transmitting information related to the dispensing from the terminal device to the communication device (see column 5, lines 66-67, and column 6, lines 1-10 of Konkright).

20. As per claim 17, Konkright teaches the method of claim 14 as described above. Konkright further teaches the method wherein notifying the user comprises notifying the user using an SMS message, or an MMS message (see column 4, lines 25-29 of Konkright).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konkright, U.S. Patent No. 5,850,344, reference A on the previously attached PTO-892, in view of Official Notice.

23. As per claim 6, Konkright teaches the system of claim 1 as described above. Konkright further teaches the system wherein the detector is arranged to monitor the dispensing of medicament and is connected to the communication device to transfer said data related to dispensing events (see column 5, lines 66-67, and column 6, lines 1-10 of Konkright). However, Konkright does not explicitly teach the system that indicates an incorrect dosage was dispensed or the medication was not dispensed at a designated time. Konkright teaches that it is known to dispense medication at a particular time (see column 5, lines 33-52 of Konkright). In addition, Konkright teaches that a medication dispensing apparatus will transmit a signal when the medication has been dispensed. Official Notice teaches that if a device can indicate that medication has been dispensed, that the absence of an indication would indicate that the medication has not been dispensed or the device could easily be programmed to indicate that the medication has not been dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Konkright. One of ordinary skill in the art would have been motivated to combine these features in order to make sure that the patient was taking the right dosage or that the patient was taking the dosage at the indicated time (Official Notice).

24. As per claim 29, Konkright teaches the method of claim 14 as described above. Konkright further teaches the method wherein the dispensing of medicament is monitored to detect dispensing events including a patient specific medication event and wherein said data includes information communicating said patient specific medication

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event (see column 5, lines 66-67, and column 6, lines 1-10 of Konkright). However, Konkright does not explicitly teach the method that indicates an incorrect dosage was dispensed or the medication was not dispensed at a designated time. Konkright teaches that it is known to dispense medication at a particular time (see column 5, lines 33-52 of Konkright). In addition, Konkright teaches that a medication dispensing apparatus will transmit a signal when the medication has been dispensed. Official Notice teaches that if a device can indicate that medication has been dispensed, that the absence of an indication would indicate that the medication has not been dispensed or the device could easily be programmed to indicate that the medication has not been dispensed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Konkright. One of ordinary skill in the art would have been motivated to combine these features in order to make sure that the patient was taking the right dosage or that the patient was taking the dosage at the indicated time (Official Notice).

25. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Konkright, U.S. Patent No. 5,850,344, reference A on the previously attached PTO-892, in view of Rossmann, U.S. Patent No. 5,809,415, reference B on the previously attached PTO-892.

26. As per claim 8, Konkright teaches the system of claim 1 as described above. However, Konkright does not explicitly teach the system wherein the terminal device is a cellular telephone. Rossmann, however, does teach the system wherein the terminal device is a cellular telephone (see column 3, lines 46-56 of Rossmann). It would have

been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Konkright. One of ordinary skill in the art would have been motivated to combine these features in order to increase the functionality of the system (see column 3, lines 52-56 of Rossmann).

27. Claims 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konkright, U.S. Patent No. 5,850,344, reference A on the previously attached PTO-892, in view of Hunter et al., U.S. Patent No. 5,608,171, reference C on the previously attached PTO-892.

28. As per claim 11, Konkright teaches the system of claim 1 as described above. However, Konkright does not explicitly teach the system wherein spread spectrum radiofrequencies are used. Hunter et al., however, does teach a system wherein a communication device communicates with the terminal device using spread spectrum radiofrequency signals (see column 4, lines 25-26 and 40-48 of Hunter et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Konkright. One of ordinary skill in the art would have been motivated to combine these features to provide multiple users with a noise and interference resistant system for both voice and data communication (see column 4, lines 47-48 of Hunter et al.).

29. Method claim 24 repeats the subject matter of claim 11 as a series of steps rather than a set of "means-plus-function" elements. As the underlying system has been shown to be fully disclosed by the teachings of Konkright and Hunter et al. in the above rejection of claim 11, it is readily apparent that the Konkright and Hunter et al.

references include a method of using the system. As such, these limitations are rejected for the same reasons provided in the rejection of claim 11 and incorporated herein.

30. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Konkright, U.S. Patent No. 5,850,344, reference A on the previously attached PTO-892, in view of Danneels et al., U.S. Patent No. 6,272,472, reference D on the previously attached PTO-892.

31. As per claim 28, Konkright teaches the method of claim 14 as described above. However, Konkright does not explicitly teach providing these executable instructions on a machine-readable medium. Danneels et al., however, teaches a computer-implemented method realized as one or more programs on a computer (see column 2, lines 40-46.) In addition, Danneels et al. teaches that the programs are storable on a machine-readable medium such as a floppy disk or a CD-ROM (see column 2, lines 46-49 of Danneels et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Konkright. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of distribution and installation and execution of the software on another computer (see column 7, lines 46-49 of Danneels et al.).

Response to Arguments

32. With regard to Applicant's arguments filed 27 February 2008, it is respectfully submitted that the Examiner has applied new prior art to the amended features of amended claims 1-26 and 28-29 at the present time. As such, Applicant's remarks with

regard to the application of Conkright to the amended claims are moot in light of the inclusion of the teachings of Official Notice addressed in the above Office Action.

Conclusion

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

34. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Kohut, Esq. whose telephone number is 571-270-1369. The examiner can normally be reached on M-Th 730-5 w/1st Fri off. 2nd Fri 730-4.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. M. K./
Examiner, Art Unit 3626
3/19/2008

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626